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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

No. 43037-1-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IN THE MATTER OF:

Anthony F. Cota,

Appellant,

v.

Regina K. Evans FKA Regina K. Cota,

Respondent.

RESPONDENT'S BRIEF

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Pro Se

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I. INTRODUCTION

The issues the appellant brought before the court was whether the court had jurisdiction to award postsecondary educational support for the parties' 19 year old child and, if so, how much, should be paid.

At the time the parties were divorced, the precedent had already been set that postsecondary educational support for the parties' minor children would be provided. The court had jurisdiction to award postsecondary educational support. The amount of the award was fair. The judge also made suggestions which might reduce this obligation such as talking to the financial aid office, completing the FAFSA, and taking out loans, as most every other parent does. The appellant did not attempt any of these suggestions; instead, he chose to pay for an expensive attorney to argue against paying for postsecondary educational support for his minor children. The real issue before this court is the fact that the appellant does not want to be financially obligated in supporting his children with postsecondary education. The decision made by the courts was within jurisdiction and was reasonable and fair with how much should be paid.

II. Assignments of Error

Appellant, Anthony Cota, assigns three errors: 1) Court jurisdiction to award postsecondary support. 2) Court awarded postsecondary support 3) Court awarded

amount of postsecondary support. This Response Brief addresses all three of the appellant's statements of the assignments of error.

III. STATEMENT of the Case

The appellant, Anthony Cota, herein after referred to as "Anthony", and the respondent Regina Evans, FKA Regina Cota, herein after referred to as "Regina", had three children at the time of their divorce in 2006. An agreed order of child support was entered on November 3, 2006. CP 113-126. The parties agreed, not based on their financial circumstances, but on the precedent that had been set during the time the children growing up, that the children would be supported with postsecondary education expenses. CP 114, CP 115. Anthony was required to pay \$759.99 child support to Regina. CP 116. Anthony was also required to pay postsecondary education for their children, Sarah, Annamarie, and Kimberly. It was capped at \$6000, both parents obligation, and represented the average cost of tuition for a public college at the time of their divorce in during 2006. CP 117. Anthony was also required to pay child support continuing until the age of 23 for both of their younger children provided they attend a postsecondary educational institution. CP 117. It was determined that Regina's income was \$10,938 and Anthony's income was \$3,761 at that time. The ages of the children at the time of the divorce were 18, 14 and 11. The section relating to termination of support and postsecondary education stated as follows:

3.13 Support shall be paid until the children reach the age of 18, or as long as the children remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14. Father shall continue to pay child support for both children through the age of 23 provided that both children attend a postsecondary educational institution.

3.14 The parties shall pay their pro rata shares of the children's postsecondary educational expenses including, but not limited to, tuition, fees, books, room and board. Father's portion is due directly to each child's postsecondary educational institution is due no later than September 1st of each year in the amount of \$1500 per child for Sarah, Annamarie and Kimberly. Mother's portion for each child shall not exceed \$4,500 per year per child.

CP 117.

In 2009, Regina moved to modify the order of child support based on her reduced income. In April of 2009, Regina's employer shut down and she was out of work after 21 years on the job. CP 187. February 18, 2010, the court entered a modified order of child support. CP 125-139. Anthony's net income was determined to be \$3,405.36, similar to the amount of income in the 2006 agreed order. CP 126-127. Regina's net income was determined to be \$2,919. CP 127. Child support was modified and increased to \$929.10 per month, \$464.55 per child per month. CP 128. At this hearing February 18, 2010, Regina asked the court to set the amount owed for Anna's postsecondary expenses, but it reserved the issue as it was a bit early at that point as she had not yet been accepted into any particular school. The issue of postsecondary educational support was not reserved; it

specifically states that each of us is required to pay our pro rata share of these expenses. CP 206. The language relating to the termination of support and postsecondary educational support was modified to state as follows:

3.13 Support shall be paid until the children turn 18 or until the children graduate from high school, whichever occurs last, except as set forth in Paragraph 3.14 below.

3.14 Postsecondary support determination is premature and is reserved for future determination.

CP 129.

A little over a year later, Anthony brought a motion for contempt along with yet another motion to modify child support on August 22, 2011. CP 153, CP 154 CP 160. Anthony's declaration attached with the contempt motion argued that he wanted to claim Annamarie on his taxes as a dependant. CP 148, CP 149. Anthony brought the motion to reduce his support obligation again, despite the fact that child support was modified in just the year prior and only after the parties had attempted to negotiate amounts for postsecondary support on their own, but failed. CP 206 and CP 210. Regina's response to the Petition requested determination of the amount of postsecondary support as the amount determination was previously reserved.

CP 129. Child support was again modified to the amount of \$433.66 monthly for the one remaining child under 18. CP 301. Anthony's one previous year of income was used to determine his net income at \$2,169.88. CP 298. This net income was the net income that Regina calculated in her declaration and took into consideration two tax exemptions, one for Anthony and the other for Annamarie. CP 208

Regina's income was determined at \$2313.94. CP 300. Anthony's year to date income was \$2482.00. CP 166 and CP 4. Anthony had a history of higher earnings. CP 207. CP 61. Anthony was ordered to pay postsecondary education costs in the amount of \$8,135.07 for the school year 2011/2012. CP 306. The total costs of tuition for all students attending PLU for the 2011/2012 were provided to the courts. CP 268. Annamarie was accepted to PLU and awarded scholarships for her exceptional grades in high school, in addition to financial aid. The breakdown of the specific costs for one semester at PLU for Annamarie was presented to the courts. This also included a breakdown of Annamarie's specific financial aid awards and scholarships. CP269. The total cost for Annamarie to attend PLU for one year was \$22,282, less than the cost to attend WSU which was \$26,000. CP 210. This reduction in PLU's overall cost was all a result of Annamarie's ability to obtain an academic scholarship of \$11,000 per year and three other yearly scholarships from the Kiwanis \$600, Q Club \$2,040 and Wing, Mabel Scholarship \$3,138. CP 269. These scholarships reduced the cost of attending PLU, ultimately making PLU less expensive than attending WSU, which was part of Annamarie's decision making processes for attending college. The cost to attend PLU versus WSU and Annamarie's intent to attend PLU were things Anthony was made aware of during discussions he had with Annamarie and me prior to her enrollment at PLU. CP 210. Contrary to what the appellant states, the child's aptitude was demonstrated by the child to both to the father, the mother, and the court with the Academic Achievement Scholarship Award. CP 269. Also contrary to what the appellant states, the child demonstrated her financial dependence, when Anthony

himself claimed Annamarie on his taxes for 2010 and 2011. CP 28. The student's dependence was demonstrated again by the detail of student loans and parent plus loans obtained in order for the student to attend college. CP 269.

A motion to revise was filed CP 327. December 5, 2011, a hearing was held and the trial court ordered that the parents shall each pay their pro rata share of two-thirds of the postsecondary educational costs for the child. CP340. A motion for reconsideration was denied. CP 360, 361.

Appellant stated he does "not even have a high school diploma", however, he does have a GED, the same GED he had at the time of the parties divorce in 2006 when the postsecondary education support was agreed upon. CP 165. Regina's financial declaration states her monthly expenses of \$5,668. CP 270. Regina's income was determined at \$2313.94. CP 300. Anthony's statement that Regina shares expenses with a spouse that makes approximately \$70,000 to \$140,000 is ridiculous and is misleading to the courts. Regina's tax return from 2009 had an income of \$140,011, which reflects her last year in banking, severance pay and her husband's income. CP78. Regina's 2009 taxes also show her making unemployment income after the loss of her twenty one year career which happened in April of 2009. CP78, CP 79 and CP 204. Regina's husband made \$72,403 while Regina received unemployment compensation for 2010. CP 80. Regina transitioned from unemployment to a new job at United Way of Pierce County was verified both with paystubs and bank statements. CP 89-94 and CP 83, 84. Regina listed her husband's monthly income of \$4400. CP 272. Regina's spouse's income is limited and is required to support his sole custody of his two young sons. CP 353. Anthony

has had a longstanding history of higher earnings. CP 207 and CP 61. The trial court made a statement that postsecondary education was a long-term proposition as it is for everybody and it is something to deal with over the long term (Report of Proceedings of December 2, 2011, hearing Pages 41-42). A student loan in the amount of \$8,000 has a loan payment of approximately \$80, about the same cost that Anthony reflected that he spent each month eating out at restaurants. CP 168. Anthony did not make one attempt to research or reduce his daughter's college bill, either by filling out the FAFSA or by contacting the financial aid department to see if grants might be available because of his one year of limited income (Report of Proceedings of January 6, 2012, hearing Page 8). CP 354. Regina is able to assist her daughter using financial aid and loans because this is a priority expense, for her daughter's welfare and future wellbeing.

IV. Argument

Standard of Review

A court abuses its discretion if its decision is based on an incorrect standard or the facts do not meet the requirements of the correct standard. The trial court considered all the relevant factors. The trial courts' decision was based on correct standards and the facts met the requirements of the correct standards. The award is not unreasonable under the circumstances.

Jurisdiction

The applicable section of the statute relating to when the court still has jurisdiction to modify child support and provide for postsecondary child support states as follows:

...(3) Unless otherwise agreed in writing or expressly provided in the decree provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child...

RCW 26.09.170 (3)

An action was brought before the trial court for the amount of postsecondary educational support when the child was 17. The order of child support entered on February 18, 2010 stated the following:

3.13 Support shall be paid until the children turn 18 or until the children graduate from high school, whichever occurs last, except as set forth in Paragraph 3.14 below.

3.14 Post secondary support determination is premature and is reserved for future determination.

Paragraph 3.14 did not state Postsecondary support is premature and is reserved for future determination as long as an action is brought before the courts prior to high school graduation of the child. Instead, the simple language of the order states postsecondary support determination is reserved for future determination. Not only was postsecondary educational support awarded and agreed upon at the time the parties' divorced, but

postsecondary educational support was also expressly provided in the order dated February 18, 2010.

Therefore the trial court did have jurisdiction to order an award for postsecondary educational support.

Postsecondary Educational Support Factors

The applicable portion of the statute relating to postsecondary educational support states as follows:

... (2) When considering whether to order support for postsecondary education expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together...

RCW 26.19.090(2)

The first measure to award postsecondary education was met. The court determined Annamarie was a dependent who relied upon the parents for the reasonable necessities of life. Annamarie did not have tax returns to provide to her

father. Anthony knew this. In Anthony's declaration he signed July 18 2011, he even argued to include Annamarie on his taxes as a dependant. Also, the net income Anthony used in the October 13, 2011 Order of Child Support included two tax exemptions, one for himself and one for Annamarie. The amount of student loans Annamarie and Regina took out, as referenced in the detailed billing from PLU, was proof Annamarie is financially dependent on her parents. The court, taking these things into consideration, concluded that Annamarie was in a dependent.

The court exercised its discretion as required by law and awarded postsecondary support. The court considered the following factors when making this award:

- (1) Age of the child and the child's needs;

Annamarie was 19 years old and a freshman in college at Pacific Lutheran University. It was undisputed that Annamarie was a smart, talented girl who was expected to succeed in college. Annamarie was dependant on her parents to help with postsecondary educational expenses.

- (2) The expectations of the parties for their children when the parties were together;

The 2006 Order of Child Support entered at the time of the parties' divorce proves that the parties intended to share the costs for their daughters' postsecondary expenses and financial support. This was undisputed. Today, incomes have changed. Regina's changed substantially. Though incomes change, it does not change the

parties' expectations for their children when the parties were together.

- (3) The child's prospects, desires, aptitudes, abilities, or disabilities;
Again, Annamarie is a talented, smart girl who got accepted to a good school, awarded an academic scholarship, and who is succeeding in life. She deserves the financial support of her parents, as promised to her since the first Order of Child Support was entered. The court did determine aptitudes and abilities with the detailed statement from PLU. It takes good grades to get accepted at PLU. The detailed statement from PLU provided proof Annamarie was awarded an academic scholarship and many other scholarships. It also takes good grades to get scholarships and it takes a child with strong prospects and desires to apply for and get scholarships. Anthony had access to her high school grades. Is Anthony trying to say he did not know his daughter was not capable of attending a four year school? Again, Annamarie deserves the financial support of her parents, as promised to her since the first Order of Child Support was entered.
- (4) The nature of the postsecondary education sought;
Anna is attending Pacific Lutheran University and intends to obtain a Bachelor's Degree. She is enrolled in a traditional postsecondary

education program. The expense of this postsecondary education was less than the cost to attend WSU 2011/2012 school year tuition because of the financial aid PLU provided to Annamarie. Annamarie and I shared this information with Anthony in the summer prior to Annamarie attending PLU.

- (5) The parents' level of education, standard of living, and current and future resources;
- Both parents have a high school diploma/GED. The same education levels at the time the parties' divorced. While Anthony argues that his entire postsecondary obligation should be excused based upon his reduced income over the past year, his historical earnings prove he has the financial resources necessary to contribute to Annamarie's postsecondary expenses. The prior child support worksheets entered both at the time of the divorce and in 2010 show that Anthony has earned a strong income and can afford to obtain the necessary financial aid and/or loans to assist Annamarie. Regina obtained loans to help pay her share of the expenses; Anthony can do the same thing. Anthony's payment on a loan in the amount of \$8,000.00 would be approximately \$80.00; something his declaration shows he can afford. Although Anthony argues that Regina can pay because she has a wealthy spouse, this is totally untrue. As shown on Regina's financial declaration, her husband's

income is limited and is required to support his sole custody of his two young sons. Regina is able to assist her daughter using financial aid and loans because this is a priority expense for her daughter's welfare future wellbeing.

- (6) The amount and type of support that child would have been afforded if the parents had stayed together;

The prior Order of Child support entered at the time of the parties' divorce in 2006 makes it clear that they always intended to share the costs of their daughter's postsecondary expenses. But for the divorce, there can be little to no doubt that Annamarie's postsecondary support would be paid by her parents.

Washington courts have long held that a parent may be required to help provide for their child's college expenses. *Esteb v Esteb*, 138 Wash. 174, 244 P.2d 264, 246, P. 27, 47 A.L.R. 110 (1926). The courts have also considered the amount and type of support (i.e., the advantages, educational and otherwise) that the child would have been afforded if his parents had stayed together. *Puckett v. Puckett*, 76 Wn.2d 703, 458 P.2d 556 (1969).

The trial court came to a conclusion based on the facts; Annamarie was a dependant. The specific details surrounding all of Annamarie's postsecondary education was presented to the trial court, three times. During these three hearings, all the requirements for RCW26.19.090(2) were considered by the trial court. The information provided in all three hearings was exactly what Annamarie's costs were

to attend college. Because Anthony's argument is that he is not aware, the information provided was limited, and Regina did not provide anything; this would lead Regina to believe that Anthony did not look at what was provided to the trial court.

The trial court took everything into consideration when awarding postsecondary education support. The trial court's decision to award postsecondary support should be upheld.

Limitation on amount of support

The applicable portion of the statute relating to postsecondary educational support states as follows:

... (2) When considering whether to order support for postsecondary education expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together...

RCW 26.19.090(2)

The court has discretion when determining whether and for how long to award postsecondary support. There is no limit set in determining postsecondary support.

Anthony argues that Postsecondary education expenses are support and should be limited to forty-five percent of Anthony's net income, referring to RCW 26.19.065(1). The trial court was clear in stating the fact that transfer payments for child support are not postsecondary education expenses, therefore, the forty-five percent limit does not apply. Most people, like Regina, take out loans and apply for financial aid to afford for their children to attend college. The trial court provided an example for Anthony to help with understanding the difference between postsecondary education expenses and transfer payments. (Report of Proceedings of January 6, 2012, hearing Page 12)

The trial court made a statement that postsecondary education was a long-term proposition as it is for everybody and it is something to deal with over the long term (Report of Proceedings of December 2, 2011, hearing Pages 41-42). If the court wanted to limit Anthony's postsecondary expenses to 45% as Anthony calculated, this would allow Anthony to obtain approximately \$50,000.00 of student loans. The payments on \$50,000.00 of student loans would be approximately \$543.45, forty-five percent of Anthony's net income, after his other daughter's support is removed.

Anthony also argued that the cap that was put on postsecondary education back in 2006 should remain the case, but neglects to take into account the skyrocketing costs of postsecondary education. The court should uphold the decision of the trial court on the amount of postsecondary educational support that was awarded.

V. Conclusion

Anthony did not make one attempt to research or reduce his daughter's college bill, either by filling out the FAFSA or by contacting the financial aid department to see if grants might be available because of his one year of limited income (Report of Proceedings of January 6, 2012, hearing Page 8).

The court should uphold the trial court decision awarding postsecondary education support. There was appropriate jurisdiction when the trial court ordered postsecondary support. Postsecondary support was ordered based on facts and details, all within RCW 26.19.090. The court should not remand this case to the trial court for specific findings of amounts; but instead uphold the pro rata share decision of the trial court.

If this court should find that awarding postsecondary education was an error, then this court should order Appellant to re file his 2011 tax return, not claiming Annamarie as a dependent.

Respectfully submitted this 29th day of November, 2012.



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Return of Service

I Declare:

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☒ Respondent's Brief

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4. Service was made:

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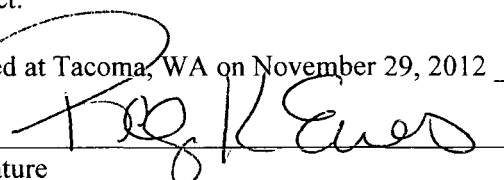
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6. Other: _____

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Tacoma, WA on November 29, 2012 _____.

Signature



Regina K Evans

Pro Se

File the original Return of Service with the clerk. Provide a copy to the law enforcement agency where protected person resides if the documents served include a restraining order signed by the court.